

June 12, 2000

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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**REPORT AND DECISION ON APPLICATION FOR PRELIMINARY PLAT APPROVAL AND
THRESHOLD DETERMINATION APPEAL**

SUBJECT: Department of Development and Environmental Services File No. **L99P3006**

JERRY'S PLACE

Preliminary Plat Application
SEPA Threshold Determination Appeal

Location: South of Southeast 204th Way (aka Lake Young's Way),
between Soos Creek Park and 140th Avenue Southeast

Applicant: **W. E. Ruth Corporation**
19222 – 108th Avenue South
Renton, WA 98055

Appellant: W. E. Ruth Corporation, *represented by*
Eric LaBrie, Barghausen Consulting Engineers
18215 – 72nd Avenue South
Kent, WA 98032
Telephone: (425) 251-6222

King County: Department of Development and Environmental Services,
Land Use Services Division, *represented by*
Kim Claussen
900 Oakesdale Avenue Southwest
Renton, WA 98055-1219
Telephone: (206) 296-7167 Facsimile: (206) 296-6728

SUMMARY OF RECOMMENDATIONS:

Department's Preliminary Recommendation:	Grant the application, subject to conditions; deny the appeal
Department's Final Recommendation:	Grant the application, subject to conditions; deny the appeal, modify MDNS
Examiner's Decision:	Grant the application, subject to conditions;

deny the appeal, modify MDNS

PRELIMINARY MATTERS:

Application or petition submitted: July 29, 1999
Complete application: August 26, 1999

EXAMINER PROCEEDINGS:

Hearing Opened: May 25, 2000
Hearing Closed: June 1, 2000

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

ISSUES/TOPICS ADDRESSED:

- Wildlife protection
 - nest buffer tract
 - seasonal construction limitations

SUMMARY:

The preliminary plat application is granted, subject to conditions. The SEPA appeal is denied, but the MDNS conditions are modified.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. General Information:

Developer:	W. E. Ruth Corporation 19222 – 108 th Ave. SE Renton, WA 98055	Telephone: (253) 852-4682
Engineer:	Barghausen Consulting Engineers 18215 – 72 nd Ave. S. Kent, WA 98032	Telephone: (425) 251-6222
Location:	The site lies south of SE 204 th Way (aka SE Lake Youngs Way) between Soos Creek Park (west boundary) and 140 th Avenue SE.	
STR:	3-22-5	
Zoning:	R-6 PSO (urban) and RA-5 PSO (rural)	
Acreage:	19.82 acres (total); 3.96 acres—urban; 15.86 acres--rural	
Number of Lots:	18 lots	

Density: 0.9 units per acre (9verall); 5 units per acre for urban area

Lot Size: Ranges from approximately 2,000 to 4,000 square feet

Proposed Use: Attached dwellings (i.e. townhouse units)

Sewage Disposal: Soos Creek Water & Sewer

Water Supply: Soos Creek Water & Sewer

Fire District: Fire District No. 37

School District: Kent School Districut No. 415

Complete Application Date: August 26, 1999

2. Except as modified herein, the facts set forth in the King County Land Use Services Division's preliminary report to the King County Hearing Examiner for the May 25, 2000 public hearing are found to be correct and are incorporated herein by reference. The LUSD staff recommends approval of the application, subject to conditions.
3. The W. E. Ruth Corporation, represented by Barghausen Consulting Engineers, has submitted a request to subdivide 19.82 acres into 18 lots for development of attached dwellings. The property has been previously approved by the County Council for participation within the 4:1 program described at Comprehensive Plan Policies I-204 and 205. The southern portion of the property consists of 15.86 acres zoned RA-5P that will be permanently dedicated as open space. Significant portions of the open space tract consist of wetland areas and a tributary stream that flows west into Soos Creek. Most of the parcels lying adjacent to the property to the west are within County-owned Soos Creek Park.
4. The northernmost portion of the property comprising 3.96 acres lies adjacent to Lake Youngs Way and has been redesignated R-6 pursuant to the 4:1 program. This parcel is also subject to major development constraints, including wetlands in both the northeast and southwest corners. The discovery of an active red-tailed hawk nest near the boundary between the development site and the open space tract has exacerbated these limitations, as the ensuing discussion will describe.
5. A Mitigated Determination of Non-significance was issued for the proposed plat of Jerry's Place on March 31, 2000. The conditions of mitigation require establishment of a sensitive areas tract defined by a radius of 325 feet from the red-tailed hawk nest. They also prohibit construction activities within 650 feet of the nest during the nesting season, defined each year as running from February 1 through July 31. When the SEPA conditions are combined with limitations on wet season construction that require development activity to terminate at the end of September, site development becomes effectively limited to a 2 month period comprising August and September.
6. On April 4, 2000, Barghausen Engineers filed a timely appeal of the SEPA threshold determination. The appeal challenges "the mitigation condition that requires the project to place a 325 foot radius around a red-tailed hawk's nest adjacent to the urban portion of the site in a separate tract". The Applicant's appeal statement proposes instead that the nest buffer be reduced to 230 feet on its north side at the point closest to the proposed development envelope.
7. A combined hearing on the preliminary plat application and the SEPA threshold determination appeal was held by the King County Hearing Examiner's Office on May 25, 2000. The hearing was continued through June 1, 2000 in order to allow to the Applicant an opportunity to respond to local hawk nest buffer survey data generated by the County. Staff at the hearing also

recommended that the nest buffer tract be reduced from a 325-foot radius to 250 feet from the

nest tree, a reduction that substantially adopts the Applicant's position. With either a 230-foot or 250-foot protective radius, construction of Lot Nos. 15-18 of the proposal and the adjacent portion of the private road would be precluded.

8. At the public hearing the Applicant endeavored to expand the scope of its SEPA appeal beyond the issues stated in its April 4, 2000 letter. The Applicant now seeks to have the buffer area surrounding the nest implemented by covenants restricting development on platted Lot Nos. 15-18, rather than being effectuated by a separate tract as stated in the MDNS condition. The Applicant also requests flexibility to do clearing, grading and some utility installation at Phase 1 development for the deferred 4 units of the project lying within the nest protection zone. Finally, the Applicant at the hearing sought to expand the site construction window to include the entire month of July and half the month of June based on the contention that once hawk eggs are hatched, the risk of disturbance impacts becomes significantly reduced.
9. While a last minute expansion of the SEPA appeal issues beyond those contained within the original appeal statement must be considered as procedurally unacceptable, some flexibility may be justified in the instant case based on the public benefits received from the open space dedication and the policy of the 4:1 program to achieve adequate densities within the Urban portion of the site. Within that context, some further amendment of the SEPA conditions may be entertained so long as the basic policy purpose underlying the conditions can be met.

In this regard it is worth noting that staff has already shown considerable flexibility toward the needs of this project in volunteering to reduce the nest protective area radius to 250 feet and in the acceptance of wetland buffer averaging that clearly pushes the code provision to its limits. Of the 18 lots proposed by the Applicant, 10 of them lie either wholly or partially within the required Class 2 wetland buffers. Both on-site recreational areas and part of the private road system encroach on the buffers as well. Most wetland buffer averaging will occur within the open space tract where buffers will be expanded *pro forma* in an area that would not be subject to development under any circumstances. Thus, the buffer averaging calculation has been reduced to a symbolic exercise, and project development is allowed by the staff conditions to be accompanied by uncompensated loss of wetland buffer area.

10. While the level of wildlife habitat protection provided under the King County Comprehensive Plan within the Urban Area is generally rather minimal, exceptions have been made for certain identified species that are listed as threatened or endangered, or where certain species have been deemed ones of local importance. Among the habitat areas that Comprehensive Plan Policy NE-604 directs the County to "designate and protect" are "habitat for raptors and herons of local importance", more specifically for the "red-tailed hawk, osprey, black-crowned night heron, and great blue heron".
11. The protective requirements of the SEPA conditions imposed within the March 31, 2000 MDNS are taken directly from the Washington State Department of Fish and Wildlife's "Management Recommendations for the Red-tailed Hawk". Based on a survey of the available scientific literature, WDFW Management Condition No. 2 provides in pertinent part as follows:

"Restrict clearing, grading, construction and other human activity, including recreational, around the nest site during the nesting period of February 1-July 31...Heavy activity

such as clearing, grading, or outside construction should be prohibited within a radius of 650 ft (200m) of the nest during the nesting period and less intrusive activity such as walking, driving, and daily human activity should be restricted within 325 ft (100m) of the nest..."

12. The Jerry's Place plat is not the first instance in which the County has been asked to reduce a protective buffer around a red-tailed hawk's nest. In attempting to accommodate development pressures, County agencies have experimented with imposing red-tailed hawk nest buffers in the 150-200 foot range. As noted within an October, 1999 memo from Tom Beavers, Wildlife Biologist with the County Department of Natural Resources, this accommodation does not appear to have been a successful one:

"King County has attempted to tailor (sic) buffer requirements to site-specific characteristics for the past 7 years. Permanent buffers have ranged from 150 to 200 feet. During the 1998 nesting season, I visited 9 plats and short plats where red-tailed hawk nests were conditioned through SEPA. All of these projects were built or were in the process of being built. Approximately one-third of the nests were on slopes that sloped away from the development, one-third sloped toward the development, and one-third of the nests were on flat ground. Coniferous and deciduous trees usually screen the nests. None of the nests were active during the 1998 visits. Many of the nests were visited on several occasions. Several other red-tailed hawk nests were visited that were not associated with any development. In these areas, red-tailed hawks had selected nests at least 300 feet from structures. Red-tailed hawks have a strong affinity for a nesting territory, and they often re-use the same nest year after year unless they have a reason not to continue it. The fact that none of the nests, associated with development permits, were active indicates that the buffers are not adequate."

13. Nonetheless, there is evidence that the particular red-tailed hawks on the Jerry's Place parcel have at least some tolerance for human activity closer than 200 feet. During the last winter, a new house was started on an adjacent parcel to the east at a distance of approximately 150 feet from the hawk's nest. The house is sheltered from the hawk nest cottonwood by a stand of relatively mature trees. Although demonstrating defensive behavior, the hawks have not abandoned the nest. But, on the other hand, there is no evidence that the hawks reproduced during the past nesting season.

In view of the foregoing, the willingness of staff to reduce nest protection zone to 250 feet appears to be as much of an accommodation as is prudent under the circumstances. The fact that a single source of human disturbance has been tolerated by the hawk does not imply that such activity level can be multiplied indefinitely without adverse consequences. The Applicant's argument that the large open space tract to be dedicated south of the nest tree will mitigate for impacts occurring north of the tree is simply a *non sequitur*. If the problem is nest disturbance, then providing extra undeveloped area on the other side of the nest tree does not achieve mitigation. In view of the County's poor success rate with 200-foot hawk nest buffers, reduction of the buffer below 250 feet would be inconsistent with the protective policy articulated at NE-604.

14. The SEPA condition allows the nest protection tract to be converted to 4 further platted lots as proposed by the Applicant at such time that the nest has been documented to be no longer active.

This requirement translates into abandonment for at least 5 years. The Applicant has proposed a number of alternative approaches that would allow the lots to be platted now, subject to protective covenants. Such an approach has been rejected in the past, and is not supported by the language of Comprehensive Plan Policy NE-604. Temporary tracts provide no reliable long term resource protection, and the platting of lots that cannot be sold is both likely to confuse the public and is unsupported by subdivision regulations.

15. With respect to the Applicant's further concerns, the conditions of mitigation can be amended to achieve a greater degree of flexibility. We agree with staff and the WDFW Management Recommendations that the period of risk for nest disturbance does not end until the young have fledged the nest tree. We also believe that July 31 is a reasonable general termination date for the protective period based on the existing literature. Nonetheless, in some years when nesting activity takes place, fledging may occur prior to July 31, and the conditions may be reasonably amended to allow for construction to take place when earlier fledging has been documented. In addition, during some years no reproductive use of the nest may occur at all, in which case an earlier construction date corresponding to the dry season window may be feasible. But for reductions of seasonal restrictions to occur in a responsible manner, some form of competent monitoring plan must be in place. The conditions of mitigation have been amended to provide for such monitoring to occur.
16. Finally, the Applicant has argued that some intrusion into the nest protection tract should be allowed in order to install infrastructure that will serve a later Phase 2 but for reasons of efficiency needs to be installed along with related Phase 1 facilities. While we are not persuaded that this actually is warranted, the conditions have been amended to provide for this possibility based on a showing of construction necessity and minimal buffer disturbance.

CONCLUSIONS:

1. The basic standard to be applied to the review of a threshold determination appeal is that the SEPA record must demonstrate the actual consideration of relevant environmental impacts. With respect to those relevant impacts shown to be actually considered, the decision of the SEPA official is entitled to substantial weight on review and shall not be overturned unless clearly erroneous based on the record as a whole.
2. In conjunction with the SEPA statute and regulations, KCC 20.24.080.B confers upon the Hearing Examiner broad authority to impose such conditions, modifications and restrictions on the appeal decision as may be required to make it compatible with the environment and carry out applicable statutes, regulations, codes, plans and policies. This authority supplements the SEPA appeal standards and allows specific conditions of mitigation to be imposed or modified, independent of whether the determination of non-significance is found to be clearly erroneous.
3. The SEPA record discloses actual consideration by the Department of Development and Environmental Services of the potential environmental impacts of this proposal. The appellants have not met their burden of proof to demonstrate that the determination of non-significance is either contrary to law or inadequately supported by the record and therefore clearly erroneous.

4. If the conditions of mitigation are modified in the manner provided below, the decision of the SEPA official is not clearly erroneous, is supported by the evidence of record and assures that there is no probability of significant adverse environmental impacts.
5. If approved subject to the conditions imposed below, the proposed subdivision makes appropriate provision for the public health, safety and welfare; serves the public use and interest; and meets the requirements of RCW 58.17.110.
6. The conditions of approval imposed herein, including dedications and easements, will provide improvements which promote legitimate public purposes, are necessary to serve the subdivision and are proportional to its impacts; are required to make the proposed plat reasonably compatible with the environment; and will carry out applicable state laws and regulations and the laws, policies and objectives of King County.

DECISION:

The SEPA threshold determination appeal is DENIED; provided that, the conditions of mitigation imposed under SEPA authority are modified as stated below. The preliminary plat application for Jerry's Place, as revised and received on May 8, 2000, is APPROVED, subject to the following conditions of final approval:

1. Compliance with all platting provisions of Title 19 of the King County Code.
2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication that includes the language set forth in King County Council Motion No. 5952.
3. The plat shall comply with the base density and minimum density requirements of the R-6 zone classification (urban). All lots shall meet the minimum dimensional requirements of the R-6 zone classification (urban area) or shall be as shown on the face of the approved preliminary plat, whichever is larger, except that minor revisions to the plat which do not result in substantial changes may be approved at the discretion of the Department of Development and Environmental Services.
4. The required open space (approximately 15.86 acres) shall be dedicated with the recording of the first lot. The following note shall be placed on this tract: *"That portion of the subject property with open space land use designation shall remain uncleared and be placed into a contiguous open space tract. Use shall be limited to public, non-motorized outdoor recreation. Any alterations to the site such as, but not limited to, clearing grading, and timber removal are subject to King County Codes and King County Parks and other relative agencies for review and approval."*
5. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards established and adopted by Ordinance No. 11187, as amended (1993 KCRS).

6. The Applicant must obtain the approval of the King County Fire Protection Engineer certifying the adequacy of the fire hydrant, water main, and fire flow to meet the standards of Chapter 17.08 of the King County Code.
7. Final plat approval shall require full compliance with the drainage provisions set forth in King County Code 9.04. Compliance may result in reducing the number and/or location of lots as shown on the preliminary approved plat. Preliminary review has identified the following conditions of approval which represent portions of the drainage requirements. All other applicable requirements in KCC 9.04 and the Surface Water Design Manual (SWDM) must also be satisfied during engineering and final review.
 - a. Drainage plans and analysis shall comply with the 1998 King County Surface Water Design Manual and applicable updates adopted by King County. DDES approval of the drainage and roadway plans is required prior to any construction.
 - b. Current standard plan notes and ESC notes, as established by DDES Engineering Review, shall be shown on the engineering plans.
 - c. The following note shall be shown on the final recorded plat:

“All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings #____ on file with DDES and/or the King County Department of Transportation. This plan shall be submitted with the application of any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems, shall be constructed at the time of the building permit and shall comply with plans on file.”
 - d. Storm water facilities shall be designed using the KCRTS Level 1 control standard. Water quality facilities shall also be provided using the Basic Water Quality protection menu. The size of the proposed drainage tracts may have to increase to accommodate the required detention storage volumes and water quality facilities. All runoff control facilities shall be located in a separate tract and dedicated to King County unless portions of the drainage tract are used for recreation space in accordance with KCC 21A.14.180. If the drainage tract is used for recreation space, then an easement shall be provided to King County for access and maintenance of the drainage facilities.
 - e. As required by Special Requirement No. 2 in the drainage manual, the 100-year floodplain boundaries for wetlands (Urban only) shall be shown on the engineering plans and final plat.
 - f. King County Code 16.82.150D requires seasonal limitations for construction within the Soos Creek Community Planning Area. During the period October 1 through March 31, clearing and grading is not allowed unless certain provisions are complied with as

outlined in the code. The Applicant's engineering plans and construction procedures shall demonstrate compliance with the applicable code requirements.

8. The proposed subdivision shall comply with the 1993 King County Road Standards (KCRS) including the following requirements:
 - a. During preliminary review the Applicant submitted a road variance application (File No. L00V0002), regarding a request for a private road for greater than 16 lots on a private road and a private gate. The final road improvements shall comply with any required conditions of variance approval.
 - b. Tract D, excluding that portion within the protective hawk buffer, shall be improved as an urban subaccess and minor access road.
 - c. Tract D, excluding that portion of the off-site right-of-way obtained from King County Parks, shall be dedicated as a public road, unless a variance to the KCRS is approved. If the KCRS variance is approved to allow a private road, then the lots, including the future development tract, shall have undivided ownership of Tract D and be responsible for its maintenance, and an easement to King County for maintenance of the detention facility shall be provided.
 - d. Appropriate easements from King County Parks System shall be granted for that portion of off-site right-of-way, prior to engineering plan approval.
 - e. Street illumination shall be provided at intersections with arterials in accordance with KCRS 5.03.
 - f. Modifications to the above road conditions may be considered by King County pursuant to the variance procedures in KCRS 1.08.
9. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
10. The Applicant or subsequent owner shall comply with King County Code 14.75, Mitigation Payment System (MPS), by paying the required MPS fee and administration fee as determined by the applicable fee ordinance. The Applicant has the option to either: (1) pay the MPS fee at final plat recording, or (2) pay the MPS fee at the time of building permit issuance. If the first option is chosen, the fee paid shall be the fee in effect at the time of plat application and a note shall be placed on the face of the plat that reads, "All fees required by King County Code 14.75, Mitigation Payment System (MPS), have been paid." If the second option is chosen, the fee paid shall be the amount in effect as of the date of building permit application.
11. Lots within this subdivision are subject to King County Code 21A.43, which imposes impact fees to fund school system improvements needed to serve new development. As a condition of final approval, fifty percent (50%) of the impact fees due for the plat shall be assessed and collected immediately prior to recording, using the fee schedules in effect when the plat receives final approval. The balance of the assessed fee shall be allocated evenly to the dwelling units in the plat and shall be collected prior to building permit issuance.

12. There shall be no direct vehicular access to or from SE 204th Way (aka SE Lake Youngs Way), from those lots which abut it. A note to this effect shall appear on the engineering plans and final plat.
13. The proposed subdivision shall comply with the Sensitive Areas Code as outlined in KCC 21A.24. Permanent survey marking, and signs as specified in KCC 21A.24.160 shall also be addressed prior to final plat approval. Temporary marking of sensitive areas and their buffers (e.g., with bright orange construction fencing) shall be placed on the site and shall remain in place until all construction activities are completed.
14. Preliminary plat review has identified the following specific requirements which apply to this project. All other applicable requirements from KCC 21A.24 shall also be addressed by the Applicant.

Wetlands

- a. Class 2 wetland(s) shall have a minimum buffer of 50 feet, measured from the wetland edge.
- b. The wetland(s) and their respective buffers (including those within the protective hawk buffer) shall be placed in a Sensitive Area Tract (SAT).
- c. Buffer averaging (including those within the protective hawk buffer) may be proposed, substantially as shown on revised plat map dated May 8, 2000, pursuant to KCC 21A.24.320,--provided the total amount of the buffer area is not reduced and better resource protection is achieved,--subject to review and approval by a DDES Senior Ecologist. Consideration shall be given to the substantial area of open space to be dedicated, including wetlands and buffers. Mitigation for buffer averaging shall consist of enhancement of the remaining wetland buffer within the "urban" portion of the site.
- d. A minimum building setback line of 15 feet shall be required from the edge of the sensitive areas tract.

Alterations to Streams or Wetlands

- e. If buffer averaging, road encroachment into the wetlands or their buffers, or other alterations are approved in conformance with KCC 21A.24, then a detailed plan to mitigate for impacts from that alteration will be required to be reviewed and approved along with the plat engineering plans. A performance bond or other financial guarantee will be required at the time of plan approval, to guarantee that the mitigation measures are installed according to the plan. Once the mitigation work is completed to a DDES Senior Ecologist's satisfaction, the performance bond may be replaced by a maintenance bond for the remainder of the five-year monitoring period to guarantee the success of the mitigation. The Applicant shall be responsible for the installation, maintenance and monitoring of any approved mitigation. The mitigation plan must be installed prior to final inspection of the plat.

- f. The engineering plans for the project shall be designed and reviewed to ensure that the existing water surface overflow elevation of wetland Tract A shall not increase as a result of this project.
15. The following note shall be shown on the final engineering plan and recorded plat:

**RESTRICTIONS FOR SENSITIVE AREA TRACTS AND
SENSITIVE AREAS AND BUFFERS**

Dedication of a sensitive area tract/sensitive area and buffer conveys to the public a beneficial interest in the land within the tract/sensitive area and buffer. This interest includes the preservation of native vegetation for all purposes that benefit the public health, safety and welfare, including control of surface water and erosion, maintenance of slope stability, and protection of plant and animal habitat. The sensitive area tract/sensitive area and buffer imposes upon all present and future owners and occupiers of the land subject to the tract/sensitive area and buffer the obligation, enforceable on behalf of the public by King County, to leave undisturbed all trees and other vegetation within the tract/sensitive area and buffer. The vegetation within the tract/sensitive area and buffer may not be cut, pruned, covered by fill, removed or damaged without approval in writing from the King County Department of Development and Environmental Services or its successor agency, unless otherwise provided by law. The common boundary between the tract/sensitive area and buffer and the area of development activity must be marked or otherwise flagged to the satisfaction of King County prior to any clearing, grading, building construction or other development activity on a lot subject to the sensitive area tract/sensitive area and buffer. The required marking or flagging shall remain in place until all development proposal activities in the vicinity of the sensitive area are completed.

No building foundations are allowed beyond the required 15-foot building setback line, unless otherwise provided by law.

16. Suitable recreation space (minimum 5,000 sq. feet) shall be provided consistent with the requirements of KCC 21A.14.180 and KCC 21A.14.190 (i.e., sport court[s], children's play equipment, picnic table[s], benches, etc.). Note: Tract C.
- a. An overall conceptual recreation space plan shall be submitted for review and approval by DDES, with the submittal of the engineering plans. This plan shall include location, area calculations, dimensions, and general improvements. The approved engineering plans shall be consistent with the overall conceptual plan.
 - b. A detailed recreation space plan (i.e., landscape specs, equipment specs, etc.) consistent with the overall conceptual plan, as detailed in item a., shall be submitted for review and approval by DDES and King County Parks prior to or concurrent with the submittal of the final plat documents.
 - c. A performance bond for recreation space improvements shall be posted prior to recording of the plat.

- d. The Applicant shall pay a fee-in-lieu of recreation space, prior to recording for the additional acreage not provided on-site (i.e., Tract C shall be deleted).
17. A homeowner's association or other workable organization shall be established to the satisfaction of DDES which provides for the ownership and continued maintenance of the recreation, and/or sensitive area tract(s).
18. Street trees shall be provided as follows (per KCC 5.03 and KCC 21A.16.050):
- a. Trees shall be planted at a rate of one tree for every 40 feet of frontage along SE 204th/Lake Youngs Way (urban only). Spacing may be modified to accommodate sight distance requirements for driveways and intersections.
 - b. Trees shall be located within the street right-of-way and planted in accordance with Drawing No. 5-009 of the 1993 King County Road Standards, unless King County Department of Transportation determines that trees should not be located in the street right-of-way.
 - c. If King County determines that the required street trees should not be located within the right-of-way, they shall be located no more than 20 feet from the street right-of-way line.
 - d. The trees shall be owned and maintained by the abutting lot owners *or* the homeowners association or other workable organization unless the County has adopted a maintenance program. Ownership and maintenance shall be noted on the face of the final recorded plat.
 - e. The species of trees shall be approved by DDES if located within the right-of-way, and shall not include poplar, cottonwood, soft maples, gum, any fruit-bearing trees, or any other tree or shrub whose roots are likely to obstruct sanitary or storm sewers, or that is not compatible with overhead utility lines.
 - f. The Applicant shall submit a street tree plan and bond quantity sheet for review and approval by DDES prior to engineering plan approval.
 - g. The Applicant shall contact Metro Service Planning at 684-1622 to determine if Lake Youngs Way/SE 204th Street is on a bus route. If so, the street tree plan shall also be reviewed by Metro.
 - h. The street trees must be installed and inspected, or a performance bond posted prior to recording of the plat. If a performance bond is posted, the street trees must be installed and inspected within one year of recording of the plat. At the time of inspection, if the trees are found to be installed per the approved plan, a maintenance bond must be submitted or the performance bond replaced with a maintenance bond, and held for one year. After one year, the maintenance bond may be released after DDES has completed a second inspection and determined that the trees have been kept healthy and thriving.

A landscape inspection fee shall also be submitted prior to plat recording. The inspection fee is subject to change based on the current County fees.

19. The following conditions have been established under SEPA authority as requirements necessary to mitigate the adverse environmental impacts of the proposal. The Applicant shall demonstrate compliance with the following conditions prior to final approval.
 - a. A red-tailed hawk nest is located adjacent to the southeastern portion of the Urban parcel. An area determined by a qualified King County wildlife biologist, not to exceed a radius of 250 feet from the nest and within the subject property, shall be placed in a separate tract. This tract shall remain undeveloped until such time as it is documented by the property owner, to the satisfaction of King County, that the nest is no longer active (abandoned at least five years). At that time, the portion of the tract shown as Phase 2 development within the preliminary phasing exhibit submitted on May 8, 2000, may be subdivided for residential use into 4 lots, as proposed, through the plat alteration and subdivision process, consistent with the regulations in effect on the date of complete application. A note to such effect shall be shown on the engineering plans and final plat.
 - b. Subject to the provisions stated in subparagraph c below, construction activities on any area lying within a radius of 650 feet from the nest and within the subject property shall be prohibited from February 1 through July 31 each year. For a specific development permit, this seasonal limitation may be waived by King County if it can be shown to the that the nest is not being used by hawks. Any waiver will last for one nesting season, and must be renewed for subsequent nesting seasons. For any season in which nesting activity occurs, the July 31 seasonal limitation termination date may be adjusted by King County based on a determination that the hatchlings have already fledged and the period of disturbance risk is passed.
 - c. For any nesting season in which the Applicant intends to request a shortening of the seasonal limitation under authority of subsection b above, a plan formulated by a qualified wildlife biologist shall be submitted to DDES no later than February 1, describing protocols for monitoring the nest for hawk use, and if nest usage is taking place, for identification whether eggs have been laid and hatched and when fledging has occurred. Any waivers of seasonal limitations shall be based on the monitoring data, as reviewed and approved by DDES.
 - d. Limited construction may occur within the nest tract during Phase 1 and prior to nest abandonment for the purpose of installing utilities necessary for Phase 2 development, subject to the following conditions:
 - i. Such facilities are shown on the Phase 1 engineering plans, and DDES determines both that their construction will not cause undue disturbance to the buffer or the nest and that delaying construction until Phase 2 will require later disruptive modifications to Phase 1 installations;
 - ii. In any season no such construction shall occur prior to July 31; and

- iii. No grading or paving of the Phase 2 roadway section shall be permitted.
- e. As proposed by the Applicant as mitigation, a landscape and fencing plan for enhanced vegetative buffering of the hawk nest shall be submitted to DDES and King County Department of Natural Resources, Wildlife Program, for review and approval prior to final engineering approval. A bond shall be posted with the approval of the plan.

(Policy NE-604, 1994 King County Comprehensive Plan).

ORDERED this 12th day of June, 2000.

Stafford L. Smith
King County Hearing Examiner

TRANSMITTED this 12th day of June, 2000, to the following parties and interested persons:

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Olympia WA 98504-7696

Bev Miller
14109 SE 182nd St
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Eleanor Moon
King County Executive Horse Council
12230 NE 61st
Kirkland WA 98033

New Home Trends
18912 North Creek Parkway, # 211
Bothell WA 98011

Mark Patterson
20221 - 140th Ave SE
Kent WA 98042

Richard Patterson
20221 - 140th SE
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Kent WA 98042-3051

Bill Ruth
12410 SE 248th
Kent WA 98031

John Ruth
13203 SE 236th
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Renton WA 98055

Doug Woodworth
Biota Pacific
10516 E Riverside Dr
Bothell WA 98011

Greg Borba
DDES/LUSD
Site Plan Review Section
MS OAK-DE-0100

Kim Claussen
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Current Planning
MS OAK-DE-0100

Nick Gillen
DDES/LUSD
Site Development Services
MS OAK-DE-0100

Aileen McManus
DDES/LUSD
Site Development/Roads
OAK-DE-0100

Joe Miles
DDES/LUSD
Engineering Review
OAK-DE-0100

Kate Stenberg
Water & Land Resources Division

Larry West
DDES/LUSD

NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$125.00 (check payable to King County Office of Finance) **on or before June 26, 2000**. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council **on or before July 3, 2000**. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 403, King County Courthouse, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

MINUTES OF THE MAY 25, 2000 PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L99P3006 – JERRY'S PLACE:

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the hearing and representing the Department were Kim Claussen and Joe Miles. Participating in the hearing and representing the Applicant was Eric LaBrie of Barghausen Engineering. Other participants in this hearing were County representatives Laura Casey and Dr. Kate Stenberg; also participating and representing the Applicant were Doug Woodworth, William Ruth and John Ruth. Public testimony participants were Richard Patterson and Mark R. Patterson.

The following exhibits were offered and entered into the record:

- Exhibit No. 1 DDES File No. L99P3006
- Exhibit No. 2 DDES Preliminary Report to the Hearing Examiner, dated May 25, 2000
- Exhibit No. 3 Application, dated July 29, 1999
- Exhibit No. 4 Environmental Checklist, dated July 29, 1999
- Exhibit No. 5a. Mitigated Determination of Non-Significance, dated March 31, 2000
- Exhibit No. 5b. Appeal of MDNS, dated April 4, 2000
- Exhibit No. 6 Affidavit of Posting indicating September 2, 2000 as date of posting and September 2, 2000 as the date the affidavit was received by DDES. *Note: Notice of application is only posting required.*
- Exhibit No. 7 Plat Map dated May 8, 2000 (revised).
- Exhibit No. 8 Land Use Map 632E & W; 637 E & W
- Exhibit No. 9 Assessors Maps NW & NE 10-22-5; SW & SE 3-22-5
- Exhibit No. 10 Level 1 Drainage Analysis by Barghausen Engineers, dated July 28, 1999
- Exhibit No. 11 Conceptual Drainage Plan by Barghausen Engineers, revised May 8, 2000
- Exhibit No. 12 King County Comprehensive Plan amendment (4 to 1 approval)
- Exhibit No. 13 Letter from King County Parks re: access easement, dated April 10, 1998
- Exhibit No. 14 Wetland study by Terra Associates, dated July 28, 1999
- Exhibit No. 15 Draft Red Tailed Hawk Nest Management Plan by Biota Pacific, dated December, 1999
- Exhibit No. 16 Red Tailed Hawk Nest Management Plan by Biota Pacific, dated May 22, 2000
- Exhibit No. 17 Dept. of Fish & Wildlife—Red Tailed Hawk nest recommendation
- Exhibit No. 18a. Dept. of Fish & Wildlife letter dated January 5
- Exhibit No. 18b. Dept. of Fish & Wildlife letter dated February 16, 2000
- Exhibit No. 19 KCRS Variance decision (File No. L00V0002), dated May 25, 2000
- Exhibit No. 20 Road Variance exhibit, modified by DDES
- Exhibit No. 21 Appendix A to Red Tailed Hawk Management Plan

L99P3006-Jerry's Place

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Exhibit No. 22 DDES information regarding B99L3242
Exhibit No. 23 Color copy of photo taken April 19, 2000

Exhibit No. 24 Proposed revised conditions of approval
Exhibit No. 25 Color copy of 1996 aerial photo
Exhibit No. 26 New condition
Exhibit No. 27 E-mail communication from Tom Beavers to Laura Casey

The following exhibit was entered administratively into the hearing record on June 1, 2000:

Exhibit No. 28 Letter to Hearing Examiner from Douglas Woodworth of Biota Pacific, re: Comments regarding Exhibit No. 27, dated May 30, 2000.

SLS:sje
Plats\L99P3006 RPT